

PT 96-39

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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EUREKA UNITED METHODIST CHURCH	)	
Applicant	)	
	)	Docket # 94-102-32
v.	)	
	)	Parcel Index #13-12-427-005
THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	

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RECOMMENDATION FOR DISPOSITION

Appearances:

Frederick A. Johnson and Michelle R. Mosby-Scott, of Johnson, Bunce and Noble, Inc. for Eureka United Methodist Church.

Synopsis:

The Woodford County Board of Review filed a religious Application for Property Tax Exemption with the Illinois Department of Revenue (the "Department") for Eureka United Methodist Church (the "Applicant"). The Department denied the application in part, finding that a portion of the property was not in exempt use. The applicant filed a protest to the findings and requested a hearing. At the hearing, it was established that the applicant is a religious organization that leased the portion of the parcel in question to an entity for \$1,000.00 per month for the 1994 assessment year. The lessee operated a child care center on the premises. The lessee has a

501 (c)(3) designation from the Federal government, does not have a provision for waiver or reduction of fees in their by-laws and had contracts with the departments of Children and Family Services and Public Aid in 1994. It is recommended that the decision of the Director of the Department be to uphold the decision that the 4800 square foot area was not in exempt use for the 1994 assessment year.

Findings of Fact:

1. The Department's position in this matter, namely that Woodford County parcel index number 13-12-427-005 qualified for a property tax exemption, except for the 4800 square foot area being leased, was established by the admission into evidence of Dept. Ex. Nos. 1-5.

2. The applicant is a religious organization that has been granted property tax exemptions pursuant to docket numbers 71-67, 73-480, 86-102-86 and 89-102-12. (Dept. Ex. No. 1)

3. In 1992, due to growth in its congregation, the applicant began construction of a 10,810 addition to its current building to house additional Sunday school classes, a fellowship hall and kitchen area. (Tr. pp. 19-21; App. Ex. Nos. 7 & 8)

4. The applicant was approached by Eureka Hospital regarding the leasing of a portion of the addition for a day care facility for some of the children of hospital employees. (Tr. p. 22)

5. Prior to contacting the applicant, the Hospital had a child care center in Eureka that had licensing problems with the management. (Tr. p. 32)

6. The hospital is affiliated with Bro-Menn Hospital in Bloomington. Rogy's Gingerbread House is the managing agent for Bro-Menn Hospital. (Tr. p. 32)

7. The hospital contacted Rogy's and asked if they would consider coming to Eureka to take over management of the center. (Tr. p. 32)

8. Rogy's agreed to meet with the applicant and discuss the rules and regulations necessary to operate a day care center. (Tr. p. 35,; Dept. Ex. No. 1)

9. The applicant thought that in order to keep the current tax position, they could only rent to a not-for-profit organization. (Dept. Ex. No. 1)

10. 16. Second Generation was formed as a not-for profit corporation to help the community of Eureka and the hospital with the problems related to the day care situation. (Tr. pp. 31-36)

11. The directors decided to incorporate Second Generation in that manner because often the response from the community is better to a not-for profit organization. (Tr. p. 56)

12. The applicant did a cost allocation and determined that the Church expenses for the use of the day care area was approximately \$1,000.00, the amount they decided to charge as rent. (Applicant's Ex. No. 9; Tr. p. 24)

13. The building required extensive alterations before it would qualify as a day care center. Those alterations were paid for by Second Generation. (Tr. p. 23)

14. Second Generation was reimbursed by the hospital for \$20,000.00 of the renovation expenses incurred. Any additional improvement costs in excess of the \$40,000.00 figure quoted to Second Generation would be assumed by the hospital. (Tr. p. 37)

15. The applicant leases a 4800 square foot area of the addition to Second Generation Child Care, Inc. (Second Generation or day care). The lease was entered into on October 11, 1993. The lessee began the use of the area on March 14, 1994. (Dept. Ex. Nos. 1 and 5; Tr. p. 63)

16. Eureka Community Hospital reimburses Second Generation \$500.00 per month for the rent. (Tr. pp. 11, 70)

17. In exchange for the reimbursement of rent, Second Generation offers reduced fees to employees of the hospital. (Tr. p. 38)

18. The hospital provides cleaning and housekeeping services twice a week for the day care facility. (Applicant's Ex. No. 15)

19. The hospital also provides the breakfast and lunch meals for all of the children (to a maximum of 58) in care of Second Generation at the applicant's facility for which Second Generation pays \$1.25 per child per day. (Applicant's Ex. No. 15)

20. Second Generation has the right to occupy the leased area from 6:00 a.m. until 6:00 p.m. Monday through Friday.

Second Generation has the responsibility for the clean-up of the rooms and locking the outside doors of the church at the end of the day. (Dept. Ex. No. 1; Tr. p. 52)

21. Second Generation provides day care for children from infancy through school age. The average attendance during the period of March 14, 1994 through December 30, 1994 was 53 children per day. (Dept. Ex. No. 5)

22. Second Generation was incorporated under the general not for profit corporation act of Illinois on September 28, 1992. (Dept. Ex. No. 1)

23. The purpose of Second Generation, according to the Articles of Incorporation is:

The corporation is organized exclusively for charitable, educational, religious or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. (Dept. Ex. No. 1; Tr. p. 43)

24. The terms of the lease between the applicant and Second Generation stated "All real estate taxes are to be paid by the Lessor." There is also a provision that states "[I]f Lessor is required to pay real estate taxes because of Lessee's use of the Leased Premises, Lessee shall reimburse the amounts of such taxes;..." (Dept. Ex. No. 1; Tr. pp. 75)

25. According to the articles of incorporation of Second Generation, Dawn Meyer, Richard Rogy and Wendy Pettett are the directors of the organization. (Dept. Ex. No. 1)

26. Second Generation is exempt from payment of Federal Income tax pursuant to a 501 (c)(3) designation from the

Internal Revenue service, dated March 28, 1994. (Dept. Ex. No. 1)

27. The Internal Revenue form 990 for the calendar year beginning July 1, 1993 and ending June 30, 1994, for Second Generation, submitted with the application, states in part 5-list of Officers, Directors, Trustees and Key Employees:

Wendy Pettett as President with 1 hour per week devoted to the position;  
Richard W. Rogy as Secretary-Treasurer with 3 hours per week devoted to the position;  
Dawn M. Meyer as Director with 5 hours per week devoted to the position;  
Rae J. Rogy as Director with 2 hours per week devoted to the position;  
and Brett M. Rogy<sup>1</sup> as Director with 0 hours per week devoted to the position. (Dept. Ex. No. 1)

28. Section 11 of Article V of the bylaws of Second Generation provide for reasonable compensation to the board of directors for services rendered. (Dept. Ex. No. 1)

29. The bylaws were prepared by the attorney for the applicant and are standard corporate bylaws of for-profit corporations. (Tr. p. 53)

30. Jean Rogy<sup>2</sup>, the mother of the executive director of Second Generation, Dawn Meyer, is the owner of Rogy's Gingerbread House (hereinafter Rogy's). Her children, Dawn Meyer, Wendy Pettett, Richard Rogy and Brad Rogy, are all directors of Rogy's Gingerbread House. (Tr. pp. 57-58)

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<sup>1</sup>. The Internal Revenue Service form 990 had Brett Rogy as a Director; the transcript identified one of the brothers as Brad Rogy. I believe that the transcript had a misspelling of the name.

<sup>2</sup>. The presumption is that Jean Rogy, Rae J. Rogy, Rae Jean Rogy and Rae Rogy are one and the same person.

31. Rogy's Gingerbread House is a for-profit business that manages day care centers. (Tr. pp. 55, 58)

32. Dawn Meyer, the Executive Director of Second Generation, as well as her mother, sister, and one of her brothers, works for Rogy's. (Tr. pp. 57-58)

33. Rogy's Gingerbread House manages Second Generation. For the management services, Second Generation pays Rogy's Gingerbread House \$3,256.00 per quarter. (Tr. p. 54)

34. Second Generation has only been able to pay the management fee three times of the eight quarters that Second Generation has been in operation. (Tr. p. 54)

35. Second Generation made a profit in 1994 of \$1200.00, but the profit was based, in part, on the non-payment of the management fees to Rogy's Gingerbread House. (Tr. p. 72)

36. Rae Jean Rogy signs the checks and pays the bills for Second Generation. (Tr. p. 72, Applicant's Ex. No. 6)

37. The Department of Children and Family Services (D.C.F.S.) and Public Aid operate various programs in which Second Generation participates. Those departments determine the eligibility of each child for the various subsidized child care programs that they operate. (Tr. pp. 40-42)

38. D.C.F.S. has a contract with Second Generation and audits them annually. D.C.F.S. subsidizes child care for low income families. (Tr. p. 39)

39. Nearly 49% of the children involved in the Second Generation organization are on a subsidized program. (Tr. p. 43)

40. Approximately 40-42% of the children in the Second Generation program account for a discount of about \$18,000.00 per year compared to the fees charged for a private-pay child. (Tr. p. 41)

41. The bylaws of Second Generation have no provision for a waiver of fees. "[i]t is not the policy of Second Generation Child Care to waive or adjust fees according to ability to pay." (Dept. Ex. No. 1)

42. The Executive Director of Second Generation was able to adjust a client's fee schedule based upon the amount that the client could afford to pay. (Tr. pp 45-48)

43. The payment and billing philosophy statement of Second Generation states that if tuition is not paid, a child may not return to the day care center until tuition is made in full unless other arrangements have been made with the director. The director was not confronted with that situation in 1994. (Dept. Ex. No. 1; Tr. p. 65)

44. The fee schedule provides for a \$25.00 non-refundable enrollment fee per child with a \$50.00 fee for two or more children. (Dept. Ex. No. 1)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural



societies, and for school, religious, cemetery and charitable purposes.

The attorney for the applicant, in his brief, states that the applicable law is found at 35 **ILCS** 205/19.2b<sup>23</sup> (West 1995). However for the 1994 assessment year, the exemption for religious use is found at 35 **ILCS** 200/15-40 which states:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt,...

The General Assembly has enacted Statutes in Illinois pursuant to the permissions granted by the Constitution regarding allowances for property tax exemptions. In particular, at 35 **ILCS** 200/15-65 is one of the provisions at issue herein. Found there is an exemption for charitable organizations. In part, it states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any State of the United States,...

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the tax exemption

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<sup>3</sup>. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from the 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code, found at 35 **ILCS** 200/1-1 et seq, enacted pursuant to Public Act 88-455, which became effective January 1, 1994.

provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

The Illinois courts have consistently held that the use of property to produce income is not an exempt use, even though the income is used for exempt purposes. People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). See also The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit or sustains a loss. Turnverein "Lincoln", v. The Board of Appeals, 358 Ill. 135 (1934). In this regard, see also Village of Oak Park v. Rosewell, 115 Ill.App.3d 497 (1983).

The attorney for the taxpayer argues that the primary use of the property is religious or conversely that if the church were performing the child care services on a not-for-profit basis, an exemption status would have been granted. Neither of the propositions are necessarily true. The Illinois Constitution does not have an exemption provision for not-for-

profit organizations. However, there is an exemption for charitable organizations.

The Illinois courts have gone to great lengths to furnish guidelines and criteria to establish the standards required for an organization to classify as charitable.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits; and
- (6) The primary use of the property is for charitable purposes.

I find that Second Generation does not meet the standards established at guidelines (1), (4), (5) and (6).

Second generation has chosen to enter into relationships with the Departments of Children and Family Services and Public Aid. This was a business decision and is

not the same as providing for a waiver or reduction of fees, as is required. Additionally, the interrelationship between Rogy's and Second Generation is sufficiently equivocal that it is difficult to say with certainty what responsibility Rogy's has in regards to the operation of Second Generation. At the least, the director of the for-profit child care operation, Rogy's Gingerbread House, has the responsibility for the payment of the rent for Second Generation. What the management fee of \$3,256.00 per quarter covered was not explained fully at the hearing.

The fact that Second Generation obtained a 501 (c)(3) designation from the Internal Revenue Service is a consideration for an exemption, however, it is not determinative. People ex re. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450(1970), Clark v. Marian Park, Inc. 80 Ill.App.3d 1010, (1980)

The argument that the primary use of the entire property is religious and the use of the 4800 square foot area as a child care center is incidental is also not valid. The Appellate Court has held that the portions of property which may be easily defined or described and which do not qualify for an exemption are not entitled to the exemption. See Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (1987), Highland Park Hospital v. State, Department of Revenue, 155 Ill.App.3d 272 (1987). The arrangement specifies that Second Generation is entitled to lease a 4800 square foot area for a child care

center. The area is definite and not used for an exempt purpose.

The attorney for the applicant also argues that Children's Development Center v. Olson, 52 Ill.2d 332, (1972) is applicable to this matter. The Supreme Court in Olson, held that where one exempt entity leases property to another exempt entity, which uses said property for an exempt purpose, the lease will not be considered a lease for profit. If Second Generation had been found to be a charitable organization, the case might have been appropriate. However, based upon the fact that Second Generation is not an exempt entity, I find that Olson is not appropriate for the situation here.

Second Generation offered testimony that they may have reduced or waived fees but offered no evidence of that happening during the taxable year in question. There was also no evidence that any charges were ever reduced or waived. I find the testimony to be self serving and the fact that no evidence offered to support it, determinative.

It is therefore recommended that the Director of the Department uphold the denial of an exemption for the 4800 square foot area of permanent parcel index number 13-12-427-005, owned by the applicant and leased to Second Generation child care center.

Respectfully Submitted,

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Barbara S. Rowe  
Administrative Law Judge